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NORTHERN DISTRICT OF CALIFORNIA

SCOTT N. SCHOOLS (SC 9990)  
United States Attorney  
JOANN M. SWANSON (CSBN 88143)  
Chief, Civil Division  
ANDREW Y.S. CHENG (CSBN 164613)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-6813  
Facsimile: (415) 436-6748

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JASON HERRERA and MARIA  
HERRERA,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 06-2301 WHA

**SETTLEMENT AGREEMENT AND  
~~PROPOSED~~ ORDER APPROVING  
SETTLEMENT**

**SETTLEMENT AGREEMENT**

Plaintiffs Jason and Maria Herrera ("Plaintiffs") and defendant United States of America hereby enter into this Settlement Agreement (the "Agreement"), as follows:

1. The parties hereby agree to settle and compromise *Jason Herrera and Maria Herrera v. United States of America*, United States District Court for the Northern District of California Case Number C 06-2301 WHA (the "Lawsuit"), under the terms and conditions set forth herein.

2. The United States of America agrees to pay plaintiffs the sum of One Million Dollars (\$1,000,000.00) (the "Settlement Amount") in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the same

1 subject matter that gave rise to the Lawsuit, including any claims for wrongful death, loss of  
2 consortium, for which plaintiffs or their heirs, executors, administrators, or assigns, and each of  
3 them, now have or may hereafter acquire against the United States of America, its agencies,  
4 agents, servants, or employees.

5 3. Plaintiffs and their heirs, executors, administrators, and assigns hereby agree to  
6 accept the Settlement Amount in full settlement and satisfaction of any and all claims, demands,  
7 rights, or causes of action of whatsoever kind and nature, arising from, and by reason of any and  
8 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to  
9 property and the consequences thereof which they may have or hereafter acquire against the  
10 United States of America, its agencies, agents, servants, or employees on account of the same  
11 subject matter that gave rise to the Lawsuit, including any future claim for wrongful death.  
12 Plaintiffs and their heirs, executors, administrators, and assigns further agree to reimburse,  
13 indemnify, and hold harmless the United States of America, its agencies, agents, servants, and  
14 employees from any and all such causes of action, claims, liens, rights, or subrogated or  
15 contribution interests incident to or resulting from further litigation or the prosecution of claims  
16 by plaintiffs or their heirs, executors, administrators, or assigns against any third party or against  
the United States of America, including claims for wrongful death.

17 4. This Agreement shall not constitute an admission of liability or fault on the part of  
18 the United States of America, its agencies, agents, servants, or employees, and is entered into by  
19 and between the parties for the purpose of compromising disputed claims and avoiding the  
20 expenses and risks of litigation.

21 5. This Agreement may be pled as a full and complete defense to any subsequent  
22 action or other proceeding involving any person or party which arises out of the claims released  
23 and discharged by this Agreement.

24 6. The Settlement Amount represents the entire amount of the compromise  
25 settlement. The parties will each bear their own costs, attorneys' fees, and expenses, and any  
26 attorneys' fees or liens owed by plaintiffs will be paid out of the Settlement Amount and not in  
27 addition thereto.

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1           7.     It is also understood by plaintiffs that, pursuant to Title 28 , Section 2678 of the  
2 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall  
3 not exceed 25 percent of the Settlement Amount.

4           8.     Payment of the Settlement Amount will be made by a check drawn on the United  
5 States Postal Service and will be made payable to "Jason Herrera and Maria Herrera and their  
6 attorneys Morgan Smith and the Arns Law Firm."

7           9.     In consideration of payment of the Settlement Amount and this Agreement,  
8 plaintiffs agree that upon notification that the settlement check is ready for delivery, she will  
9 deliver to defense counsel a fully executed Stipulation for Dismissal with Prejudice of the  
10 Lawsuit. Upon delivery of the Stipulation for Dismissal with Prejudice, defense counsel will  
11 release the settlement check to plaintiffs' counsel.

12           10.    Plaintiffs have been informed that payment of the Settlement Amount may take  
13 ninety days or more to process, but defendant agrees to make good faith efforts to expeditiously  
14 process the payment.

15           11.    The parties agree that should any dispute arise with respect to the implementation  
16 of the terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue her  
17 original causes of action. Plaintiffs' sole remedy in such a dispute is an action to enforce the  
18 settlement in the United States District Court. The parties agree that the United States District  
19 Court will retain jurisdiction over this matter for purposes of resolving any dispute alleging a  
20 breach of this Agreement.

21           12.    In consideration of payment of the Settlement Amount and this Agreement,  
22 plaintiffs hereby release and forever discharge the United States of America and any and all of its  
23 past and present officials, employees, agencies, agents, attorneys, successors, and assigns from  
24 any and all obligations, damages, liabilities, actions, causes of action, claims, and demands of  
25 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or  
26 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

27           13.    California Civil Code Section provides as follows:

28           A general release does not extend to claims which the creditor does not know or  
suspect to exist in his favor at the time of executing the release, which if known  
by him must have materially affected his settlement with the debtor.

1 Plaintiffs, having been apprised of such language by her attorney, and fully understanding the  
 2 same, nevertheless waive the benefits of any and all rights she may have pursuant to Section  
 3 1542 and any similar provisions of federal law. Plaintiffs understand that, if the facts concerning  
 4 her injuries and the liability of the defendant for damages pertaining thereto are found hereinafter  
 5 to be other than or different from the facts now believed to be true, this Agreement shall be and  
 6 remain effective notwithstanding such difference.

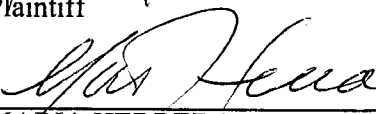
7 14. The United States Postal Service has purchased the worker's compensation lien  
 8 from the State Compensation Insurance Fund in this case, and plaintiffs will not be responsible  
 9 for paying this lien.

10 15. This instrument shall constitute the entire agreement between the parties, and it is  
 11 expressly understood and agreed that this Agreement has been freely and voluntarily entered into  
 12 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.  
 13 The parties further acknowledge that no warranties or representations have been made on any  
 14 subject other than as set forth in this Agreement. This Agreement may not be altered, modified,  
 15 amended, or otherwise changed in any respect except by writing, duly executed by all parties and  
 16 their authorized representatives.

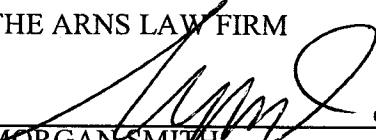
17  
 18 Dated: 03/14/07

  
 JASON HERRERA  
 Plaintiff

19  
 20 Dated: 03/14/07

  
 MARIA HERRERA  
 Plaintiff

21  
 22 Dated: 3/19/07

THE ARNS LAW FIRM  
  
 MORGAN SMITH  
 Attorneys for Plaintiff

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26 ///

27 ///

28

1 Dated: 3/23/07

2 SCOTT N. SCHOOLS  
3 United States Attorney

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5 ANDREW Y.S. CHENG  
6 Assistant United States Attorney  
7 Attorneys for Defendant

8 **PROPOSED ORDER**

9 THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO ORDERED.

10 Dated: March 28, 2007

11 HON. WILLIAM A. ALSUP  
12 United States District Judge

